United Nations Convention on the Law of the Sea SPLOS/296

Meeting of States Parties

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Appointment of Auditor for the financial years 2017-2020

Presented by the Tribunal

1. Pursuant to Regulation 12.1 of the Financial Regulations of the Tribunal:

> The Meeting of States Parties shall appoint an Auditor, which may be an internationally recognized firm of auditors, an Auditor General or an official of a State Party with an equivalent title. The Auditor shall be appointed for a period of four years and its appointment may be renewed. The Tribunal may make proposals regarding the appointment of the Auditor.

2. In order to enable the Tribunal to make proposals regarding the appointment of an auditor, seven internationally recognized firms of auditors with offices in Germany (Baker Tilly Roelfs, BDO, Deloitte, Ernst & Young, KPMG, PricewaterhouseCoopers and Warth & Klein Grant Thornton) and two German companies (Roedl & Partner and Ebner Stolz) were contacted by the Registry. In November 2015, the Registry sent those firms a request for quotation together with a scope of audit (annex I). Since the Tribunal has no internal audit service, the request for quotation included a provision for an interim audit every two years, that is, in 2018 and 2020, as well as a provision for the audit of the cash surplus.

3. Except for Deloitte, Roedl & Partner and Ebner Stolz, all firms responded to the request, and the quotations received by the Registry are as follows:

Audit firm	*Total (including expenses, excluding VAT) 2017-2018*	*Total (including expenses, excluding VAT) 2019-2020*
	(euros)	
Baker Tilly Roelfs	12 000	12 000
BDO	11 600	11 600
Ernst & Young	27 500	27 500
KPMG[a]	19 845	16 695
PricewaterhouseCoopers	23 000	23 000
Warth & Klein Grant Thornton	22 500	22 500

[a] The proposed fees of KPMG for the financial period 2017-2018 include fees for the audit of the 2015-2016 cash surplus, the 2017-2018 interim audit, the audit of the 2017-2018 financial statements and the audit of the 2017-2018 cash surplus, while the proposed fees for the financial period 2019-2020 include only the fees for the 2019-2020 interim audit and the audit of the 2019-2020 financial statements.

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4. The Registry evaluated the tenders received, taking into account the technical ability to perform the audit in accordance with generally accepted common auditing standards, the interest of the Tribunal and the best value for the money.

5. The Registry concluded that all six tenders met the requirements for performing the audit of the accounts of the Tribunal, as specified in annex II.

6. The amount of €19,145 has been included in the draft budget proposals of the Tribunal for 2017-2018 for the 2017-2018 audit, on the basis of the average of the six quotations selected in paragraph 5. The amount will be adjusted according to the decision taken by the Meeting of States Parties.

7. It may be noted that the following Auditors were previously selected to conduct the audit of the financial statements of the Tribunal:

Financial period	*Firm*	*Cost*
1996/97	Arthur Andersen	$13 000
1998	Arthur Andersen	$13 000
1999	Arthur Andersen	$13 000
2000	Arthur Andersen	$13 000
2001	PriceWaterhouseCoopers	$13 100
2002	PriceWaterhouseCoopers	$13 400
2003	PriceWaterhouseCoopers	€14 000
2004	Deloitte & Touche	€9 200
2005-2006	BDO Deutsche Warentreuhand	€7 000
2007-2008	BDO Deutsche Warentreuhand	€7 000
2009-2010	BDO Deutsche Warentreuhand	€10 450
2011-2012	BDO Deutsche Warentreuhand	€10 450
2013-2014	Ernst & Young	€20 000
2015-2016	Ernst & Young	€20 800

8. At its forty-first session, the Tribunal examined the quotations and the evaluation carried out by the Registry and decided to transmit that information to the Meeting of States Parties for its consideration, should the Meeting decide to appoint an internationally recognized firm of auditors as Auditor for the financial periods 2017-2018 and 2019-2020.

Annex I

Request for quotation

9 November 2015

The International Tribunal for the Law of the Sea is an independent international organization that has been established by the United Nations Convention on the Law of the Sea, with its seat in Hamburg, Germany. The Tribunal started its operation in October 1996.

The Tribunal has a biennial budget of approximately €20 million. Its budget is financed from the contributions paid by the States Parties to the Convention.

Pursuant to regulation 11.4 of the Financial Regulations of the Tribunal, "[t]he accounts for the financial period shall be submitted by the Registrar to the Auditor not later than 31 March following the end of the financial period."

Pursuant to regulation 12.1 of the Financial Regulations of the Tribunal, "[t]he Meeting of States Parties shall appoint an Auditor, which may be an internationally recognized firm of auditors or an Auditor General or an official of a State Party with an equivalent title. The Auditor shall be appointed for a period of four years and its appointment may be renewed. The Tribunal may make proposals regarding the appointment of the Auditor."

A decision regarding the appointment of an auditor for the financial periods 2017-2018 and 2019-2020 will be taken by the Meeting of States Parties to the Convention (166 States and the European Union) in June 2016.

We kindly request you to send us a quotation by 31 December 2015 for audits of the Tribunal's financial periods 2017-2018 and 2019-2020.

The whole process of audit consists of three steps: interim audit in 2018 and 2020, audit of the financial records in 2019 and 2021 and audit of the cash surplus in 2018 and 2020.

The quotation should include all costs related to the audit of the financial records, e.g. remuneration, travel, per diem, disbursements, etc., which will take place after the end of the financial period concerned (i.e., 2019 and 2021).

As we contemplate interim audits of the financial records and administrative procedures covering the records for the years 2017 and 2019, the quotation should also include the interim audits which will take place in 2018 and 2020.

In addition, the quotation should further include the audit of the cash surplus relating to the financial periods 2015-2016 and 2017-2018. Under the Financial Regulations and Rules of the Tribunal, the cash surplus is established one year after the closing of the financial period to which it relates, i.e. in 2018 (for the financial period 2015-2016) and 2020 (for the financial period 2017-2018).

The financial statements of the Tribunal will cover the two financial periods ending 31 December 2018 and 31 December 2020. The audited financial statements and the audit reports must be prepared after the end of the financial period and presented to the Tribunal during its administrative sessions. These sessions are to be held in March 2019 and March 2021.

On the basis of the above, the audit schedule for the financial periods 2017-2018 and 2019-2020 will be as follows:

2017-2018

– Audit of the cash surplus for 2015-2016: to be completed by mid-February 2018

– Interim audit for 2017: April/May 2018

– Audit for 2017-2018: to be completed by mid-February 2019

– Audit of the cash surplus for 2017-2018: to be completed by mid-February 2020

2019-2020

– Interim audit for 2019: April/May 2020

– Audit for 2019-2020: to be completed by mid-February 2021

The scope of the audit is defined in the enclosure accompanying the present letter (see enclosure).

Please do not hesitate to contact me on telephone number 040-35607266, Mr. Roman Ritter, e-mail ritter@itlos.org or Mrs Svitlana Buergers, e-mail hartmann@itlos.org should you require clarification or desire further information.

We look forward to your prompt response.

Yours sincerely,

(*Signed*) Doo-young **Kim**
Deputy Registrar

Enclosure

Scope of audit

(a) Whether the financial statements of the International Tribunal for the Law of the Sea present fairly in all material aspects the financial situation;

(b) Whether the expenses incurred during these financial periods are in accordance with the appropriations approved by the Meeting of States Parties;

(c) Whether expenditures incurred have been appropriately authorized by the party designated for that purpose in the Rules or the Financial Regulations of the Tribunal;

(d) Whether staff and persons being paid by the Tribunal have been recruited or engaged in the manner provided for in the Rules or the Staff Regulations and Staff Rules of the Tribunal;

(e) Whether goods and services have been procured in accordance with the procedure provided for in the Financial Regulations and Financial Rules of the Tribunal;

(f) Whether the goods and services that have been procured are necessary or not excessive, having regard to circumstances and the functions of the Tribunal;

(g) Whether the grants given to the Tribunal by the Chinese Institute of International Studies, the Nippon Foundation and the Trust Fund for the Law of the Sea maintained in separate special accounts are administered in accordance with the relevant memorandums and terms of reference;

(h) Whether the cash surplus for the financial period has been established in accordance with the Financial Regulations and Financial Rules of the Tribunal.

Annex II

Annex to the Financial Regulations

Additional terms of reference governing the audit of the International Tribunal for the Law of the Sea

1. The Auditor shall perform such audit of the accounts of the Tribunal, including all trust funds and special accounts, as it deems necessary in order to satisfy itself:

(a) That the financial statements are in accord with the books and records of the Tribunal;

(b) That the financial transactions reflected in the statements have been in accordance with these Regulations and the Financial Rules, the budgetary provisions and other applicable directives;

(c) That the securities and moneys on deposit and on hand have been verified by certificates received direct from the Tribunal's depositaries or by actual count;

(d) That the internal controls, including internal oversight, are adequate in the light of the extent of reliance placed thereupon.

2. The Auditor shall be the sole judge as to the acceptance in whole or in part of certifications and representations by the Registrar and may proceed to such detailed examination and verification as it chooses of all financial records, including those relating to supplies and equipment.

3. The Auditor and its staff shall have free access at all convenient times to all books, records and other documentation which are, in the opinion of the Auditor, necessary for the performance of the audit. Information which is classified as privileged and which the Registrar (or a designated senior official) agrees is required by the Auditor for the purposes of the audit and information classified as confidential shall be made available on application. The Auditor and its staff shall respect the privileged and confidential nature of any information so classified that has been made available and shall not make use of it except in direct connection with the performance of the audit. The Auditor may draw the attention of the Tribunal and the Meeting of States Parties to any denial of information classified as privileged which, in its opinion, was required for the purpose of the audit.

4. The Auditor shall have no power to disallow items in the accounts but shall draw the attention of the Registrar, for appropriate action, to any transaction for which it entertains doubt as to legality or propriety. Audit objections, to these or any other transactions, arising during the examination of the accounts shall be communicated immediately to the Registrar.

5. The Auditor (or such of its officers as it may designate) shall express and sign an opinion on the financial statements which shall read as follows:

> We have examined the following appended financial statements, numbered ... to ..., properly identified, and relevant schedules of the International Tribunal for the Law of the Sea for the financial period ended 31 December .... Our examination included a general review of the accounting procedures and such tests of the accounting records and other supporting evidence as we considered necessary in the circumstances.

The opinion shall also state, as appropriate, whether:

(a) The financial statements present fairly the financial position as at the end of the period and the results of their operations for the period then ended;

(b) The financial statements were prepared in accordance with the stated accounting principles;

(c) The accounting principles were applied on a basis consistent with that of the preceding financial report;

(d) Transactions were in accordance with these Regulations and legislative authority.

6. The report of the Auditor on the financial operations of the Tribunal for the financial period shall be submitted to the Meeting of States Parties through the Tribunal. It shall indicate:

(a) The type and scope of the Auditor's examination;

(b) Matters affecting the completeness and accuracy of the accounts, including, where appropriate:

(i) Information necessary to the correct interpretation of the accounts;

(ii) Any amounts which ought to have been received but which have not been brought to account;

(iii) Any amounts for which a legal or contingent obligation exists and which have not been recorded or reflected in the financial statements;

(iv) Expenditures not properly substantiated;

(v) Whether proper books of accounts have been kept; where in the presentation of statements there are deviations of a material nature from the generally accepted accounting principles applied on a consistent basis, these should be disclosed;

(c) Other matters that the Auditor considers should be brought to the notice of the Meeting of States Parties, such as:

(i) Cases of fraud or presumptive fraud;

(ii) Wasteful or improper expenditure of the Tribunal's money or other assets, notwithstanding that the accounting for the transaction may be correct;

(iii) Expenditure likely to commit the Tribunal to further outlay on a large scale;

(iv) Any defect in the general system or detailed regulations governing the control of receipts and disbursements or of supplies and equipment;

(v) Expenditure not in accordance with the intention of the Meeting of States Parties after making allowance for duly authorized transfers within the budget;

(vi) Expenditure in excess of appropriations as amended by duly authorized transfers within the budget;

(vii) Expenditure not in conformity with the authority that governs it;

(d) The accuracy or otherwise of the supplies and equipment records as determined by stocktaking and examination of the reports;

(e) If appropriate, transactions accounted for in a previous period concerning which further information has been obtained or transactions in a later period concerning which it seems desirable that the Meeting of States Parties should have early knowledge of.

7. The Auditor may make such observations with respect to its findings resulting from the audit and such comments on the Registrar's financial report as it deems appropriate to the Meeting of States Parties, the Tribunal or the Registrar.

8. Whenever the scope of audit of the Auditor is restricted, or whenever it is unable to obtain sufficient evidence, it shall refer to the matter in its opinion and report, making clear in the report the reasons for its comments and the effect on the financial position and the financial transactions as recorded.

9. In no case shall the Auditor include criticism in its report without first affording the Registrar an adequate opportunity of explanation on the matter under observation.

10. The Auditor shall not be required to mention any matter referred to in the foregoing that, in its opinion, is insignificant in all respects.